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*Counsel for Class Representative
Michael Devine*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION**

Master Docket No. 11-CV-2509-LHK

CLASS ACTION

THIS DOCUMENT RELATES TO:

**JOINDER OF CLASS REPRESENTATIVE
MICHAEL DEVINE TO MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENTS**

ALL ACTIONS

Judge: Hon. Lucy H. Koh
Courtroom: Room 8, 4th Floor
Date: July 9, 2015
Time: 1:30 p.m.

1 Class representative Michael Devine joins in Class Counsel's Motion for Final Approval of
 2 Class Action Settlement. (Dkt. 1087). Mr. Devine believes the \$415 million settlement is fair,
 3 reasonable and adequate and should be approved by the Court.

4 **I. The Settlement Is Fair, Reasonable and Adequate**

5 To grant final approval of a proposed class settlement, courts must find that the settlement is
 6 "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Each of the factors courts consider weighs in
 7 favor of final approval of the \$415 million settlement. *See Officers for Justice v. Civil Service*
 8 *Commission*, 688 F.2d 615, 625 (9th Cir. 1982). While plaintiffs have a strong case against the
 9 defendants, the risk, expense and delay of further litigation supports approval of the proposed
 10 settlement. *See, e.g., Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) (approving
 11 settlement where the case was "likely to be expensive and lengthy to try" and "[i]nevitable appeals
 12 would likely prolong the litigation, and any recovery by class members, for years"). Because the parties
 13 were on the verge of trial when this new settlement was negotiated, they had sufficient information to
 14 evaluate the strengths and the weaknesses of the case. *Id.* at 967 (finding that counsel "had a good grasp
 15 on the merits of their case" because of the extensive discovery they had conducted and completion of
 16 summary judgment motions). The reaction of the class also supports final approval, as only 11 class
 17 members (or less than 0.02% of the class) have objected, and only 56 have requested exclusion. *See In*
 18 *re TD Ameritrade Account Holder Litig.*, Nos. C 07-2852 SBA, et al., 2011 WL 4079226, at *7 (N.D.
 19 Cal. Sept. 13, 2011) ("Given the relatively small number of objections and opt-outs, the Court finds that
 20 the reaction of the class to the settlement is positive, which favors approving the Settlement."). Finally,
 21 as the Court recognized in granting preliminary approval, "the consideration—a total of \$415 million—
 22 is substantial," particularly given the risks and delay of continued litigation. (Dkt. 1054 at 4.)

23 **II. Michael Devine Supports Final Approval of the Proposed Settlement**

24 After opposing the prior settlement proposal, Mr. Devine participated, though his counsel, in the
 25 renewed settlement negotiations that resulted in the revised \$415 million settlement. The \$415 million
 26 settlement reflects an increase of \$90.5 million and will result in an increase of over 35% in the payout
 27 to class members as compared to the proposed settlement the Court previously rejected. It also exceeds
 28 by \$35 million the benchmark established by the prior settlements approved by the Court, applying the

1 relevant metric of total class compensation paid during the class period. Some class members have
2 objected that the amount of the settlement is too low, and that the case should be tried rather than settled.
3 (Dkt. 1089, Exs. C-K.) Mr. Devine had the opportunity to independently evaluate the risks and benefits
4 of continued litigation, and was able to review substantial portions of the record developed in the case.
5 Having compared the risk and delay of trial with the immediate benefits to the class of the renegotiated
6 settlement, Mr. Devine supports final approval of the settlement.

7 **III. Conclusion**

8 For the reasons set forth above and in Class Counsel's memorandum, class representative
9 Michael Devine respectfully joins the motion for final approval of the proposed \$415 million settlement.

10 Dated: June 15, 2015

GIRARD GIBBS LLP

12 By: /s/ Daniel C. Girard
13 Daniel C. Girard

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2015, I caused the foregoing document to be filed electronically with the Clerk of Court through CM/ECF and that the filing was served by CM/ECF on all counsel of record.

/s/ Daniel C. Girard

Daniel C. Girard